

COMMENTS TO LOCAL CIVIL RULE 5.7

The United States District Court for the Western District of Michigan has promulgated Local Civil Rule 5.7, effective October 1, 2001, to govern filing and service of court documents by electronic means. The Court published a proposed rule for comment on July 23, 2001. Thereafter, the Court received comments from the Court's Local Rules Advisory Committee as well as an electronic filing working group made up of representatives from the district and bankruptcy courts of the Eastern and Western District of Michigan, the State Court Administrator's Office and members of law firms across the state. In promulgating the rule in final form, the Court took into consideration comments received from these and other sources. The final rule is therefore the product of intensive scrutiny and review by a number of interested parties.

The purpose of this memorandum is to highlight for counsel important differences between the rule in its proposed and final versions.

Subsection (a)

Use of the electronic case filing system is limited to attorneys who are members of the bar of this Court. The proposed rule required that such attorneys complete in person or on-line training as a prerequisite to registering as a user of the ECF system. The final rule eliminates the completion of such training as a requirement for registration. The Court believes that its electronic case filing system is easy enough for most computer-literate users to navigate without formalized training, although such training is still highly encouraged.

Subsection (b)

Subsection (b)(ii) directs that certain documents not be filed electronically, principally because of their volume. These documents include voluminous administrative records and Rule 5 materials from the state courts in habeas corpus cases filed under 28 U.S.C. § 2254. In addition, the rule prohibits electronic filing of attachments or exhibits that exceed twenty-five pages in length, unless those documents were rendered into PDF format by word-processing software. The reason for this distinction is that lengthy, scanned documents take up an inordinate amount of electronic storage space and require excessive time to download. The final rule contemplates that an electronically filed motion or other document may have some attachments filed electronically and others filed on paper. In such a case, the motion or other document should identify in its text the attachments that are filed electronically and those that will be filed on paper. Subsection (d)(iv) gives attorneys a 72-hour grace period in which to file paper attachments to a motion or other electronically filed document. The final rule provides that in situations where attachments to an electronically filed document are required to be submitted in paper form, the document itself is nevertheless deemed filed upon issuance of the Notice of Electronic Filing, provided that the paper exhibits are received by the Clerk within seventy-two hours thereafter. Likewise, where subsection (b)(iii) allows electronic filing of documents if accompanied by a signed original (*e.g.*, affidavits), a seventy-two hour grace period is also extended. In this situation as well, the document is deemed

filed upon completion of electronic filing, as long as the signed original is received within seventy-two hours thereafter.

Subsection (f)

Subsection (f) of the final rule is new. It addresses the method of presenting proposed pleadings to the Court. This rule will govern the situation in which an attorney presents electronically a document that requires leave of court for filing. The situation may arise in a number of circumstances, such as where the party requires leave to amend or leave to file an oversized or untimely document. Subsection (f) requires that the proposed document be attached as an exhibit to the motion seeking leave to file. If the Court grants leave to file the document, the Clerk of the Court will electronically file the document without further action by the attorney.

Subsection (h)

Subsection (h) governs service of electronically filed documents. The final rule reiterates the provision that attorneys can serve other lawyers in the case by electronic means only if the attorney to be served has consented to electronic service in that case. Otherwise, service must be made in one of the methods envisioned by Rule 5 of the Federal Rules of Civil Procedure. Likewise, *pro se* litigants must be served in traditional fashion in all cases. The Court, however, will serve all registered attorneys in a case by electronic means. By registering as a user of the ECF system, attorneys consent to electronic service by the *Court* in all cases.

Subsection (i)

Several days before the Court promulgated its final rule, the Judicial Conference of the United States issued directives concerning restricted access to electronically filed documents, to preserve legitimate expectations of confidentiality. The Judicial Conference requires that access to electronically filed documents in social security cases be limited to the parties to the case. Subsection (i) of the final rule has therefore been amended to restrict access to social security files. The Judicial Conference has also indicated that it expects to issue further regulations on the subject. Subsection (i) therefore contemplates that further restrictions to access may be ordered by the Court in response to future Judicial Conference action.

In closing, the Court reiterates its openness to comments by attorneys over the course of the electronic case filing program. Our Court is an alpha court in this program, which means that our Court's experience will be taken into account before the federal courts devise an electronic case filing system for nationwide use. The reactions of attorneys using the system are therefore critical to our Court's role in this regard. Attorneys are encouraged to direct their comments in writing to the Clerk of the Court.